

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of Amendment of the Over-The-
Air Reception Devices Rule to
Clarify the Extent to which Local
Governments Can Regulate Non-Exclusive
Use Areas

FCC Docket No. MB-12-121

By W. Lee McVey, P.E.

To: The Commission

**REPLY TO THE COMMENTS OF THE NATIONAL ASSOCIATION OF
TELECOMMUNICATIONS OFFICERS AND ADVISORS, THE UNITED
STATES CONFERENCE OF MAYORS, THE NATIONAL LEAGUE OF CITIES,
AND THE NATIONAL ASSOCIATION OF COUNTIES**

The following is my Reply to the Comments of the National Association of
Telecommunications Officers and Advisors, the United States Conference of Mayors, the
National League of Cities, and the National Association of Counties (MuniGroup) in the
above captioned proceeding.

1. The Comments by MuniGroup reflect a concern for the right of local governments
to place unbridled zoning and building restrictions on private property, similar to the
Comments of the City of Philadelphia. Meanwhile, the rights of consumer subscribers

under the present OTARD Rule continue to be flaunted by its collective membership through unwarranted application of building codes and ordinances.

2. The City of Philadelphia example is bad enough. However, a more serious example of unjustified local government invasion into the use of private property was cited in my Comments in this proceeding.¹ The City of Holmes Beach, Florida, likely a member of MuniGroup in one way or another, prohibits antennas on all residential structures, not just on common use areas.² And, it doesn't matter whether the structure is a single or multi-family residence. It also limits antenna heights irrespective of the ability to obtain a satisfactory signal.³ All in the name of what it thinks is the proper exercise of its duty to promulgate and enforce building and zoning codes. If maintaining public health and safety is not the demonstrated purpose of such codes, they amount to a taking of private property by government.

3. As it sits now, those desiring satellite antennas where blocked by codes or ordinances must initiate a Commission petition process or lawsuit in Federal District Court.⁴ This is neither equitable nor fair, and impairs the subscriber choices Congress intended consumers to have when it authored Article 207 of the Communications Act of 1996. Even though OTARD stays any local ordinance enforcement pending review and decision by the Commission, *its provisions do not operate without a request for Commission or Federal Court intervention*. How many people across the US in places like Holmes Beach, Florida know how to go about

¹ McVey Comments at ¶ 4.

² Holmes Beach, Florida *Code of Ordinances* Art. **XI**, Section 11.4(A)(3).

³ *Id.* Art. **XI**, Section 11.8(A)(1).

⁴ 47CFR§1.4000(e)-(h).

petitioning the Commission to avoid being cited or arrested and convicted of violations of errant local codes? Are convictions in local courts overturned after the fact for over-reaching zoning or building codes that are found to violate the intent and spirit of the Communications Act of 1996? Such situations give rise to egregious personal and financial burdens upon individuals for failure of the Commission to prosecute local government violators. It is unbelievable that Congress intended such costs, delays and complications for consumers desiring either over the air TV or satellite TV reception.

4. The Commission is charged with enforcement of Title 47 of the United States Code.⁵ Under the authority so vested, it is expected to prosecute persons and entities that violate provisions of the various, collective Communications Acts or the derivative, promulgated regulations which constitute Title 47 of the Code of Federal Regulations. In most instances, the Commission vigorously enforces pertinent laws, rules, and regulations. However, in the case of the OTARD Rule, it relies upon its case-by-case civil petition process for resolution with no collective impact:⁶ One that has few teeth and certainly no bite. In the history of its enforcement of OTARD, I could find no examples of citation or forfeiture ever assessed upon any homeowner association or local government for having written or enacted restrictions or ordinances in violation of the OTARD Rule. Or, any order by the Commission under the present process requiring an entity found to be in violation to modify or remove unlawful language.

⁵ 47USC§151.

⁶ Declaratory Rulings issued under OTARD only decide individual Petitions and do not require defective, unlawful language to be removed from private contract land use restrictions or local government ordinances for the benefit of relief for all.

5. The OTARD Rule needs revision in order to apply Commission enforcement fairly and equitably, for the benefit of all persons; and not just those aware of and able to afford the tedious, lengthy and costly petition process. A process that, because of the delays involved, almost certainly guarantees that when challenged, consumers will give up and choose a form of cable or telecommunications provider TV access instead of satellite or over the air TV.

Respectfully Submitted this 18th day of June, 2012

A handwritten signature in blue ink, appearing to read "W. Lee McVey".

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Certification/Testament of Service

This is to attest that on the 18th of June, 2012, the undersigned placed a true, signed copy of my Reply to the Comments of the MuniGroup in the United States Mail, First Class Postage Paid, addressed to the location given in the Docket for its author as follows:

Stephen Traylor, Executive Director
NATOA
3213 Duke Street, #695
Alexandria, VA 22314

A handwritten signature in blue ink, appearing to read "W. Lee McVey", is written over a faint, light blue rectangular background.

By _____

W. Lee McVey, P.E.